

1 NICOLA T. HANNA
United States Attorney
2 DAVID M. HARRIS
Assistant United States Attorney
3 Chief, Civil Division
JOANNE S. OSINOFF
4 Assistant United States Attorney
Chief, General Civil Section, Civil Division
5 ALARICE M. MEDRANO (Cal. Bar No. 166730)
Assistant United States Attorney
6 Federal Building, Suite 7516
300 North Los Angeles Street
7 Los Angeles, California 90012
Telephone: (213) 894-0460
8 Facsimile: (213) 894-7819
E-mail: Alarice.Medrano@usdoj.gov
9

10 Attorneys for Defendant, United States Citizenship and
Immigration Services, Department of Homeland Security

11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
13 WESTERN DIVISION

14 COALITION FOR HUMANE
IMMIGRANT RIGHTS, *ET AL.*,

15 Plaintiffs,

16 v.

17 UNITED STATES CITIZENSHIP AND
18 IMMIGRATION SERVICES,
DEPARTMENT OF HOMELAND
19 SECURITY,

20 Defendant.
21
22
23
24

No. CV 18-08034 GW (MRWx)

Motion Hearing

Date: February 18, 2021

Time: 8:30 a.m.

Ctrm: First Street Courthouse

350 W. 1st Street

Ctrm. #9D, 9th Floor

Los Angeles, CA 90012

Honorable George H. Wu
United States District Judge

25 DEFENDANTS' STATEMENT OF UNCONTROVERTED FACTS
26 AND CONCLUSIONS OF LAW
27
28

Pursuant to Fed. R. Civ. P. Rule 56 and Local Rule 56-1, Defendant United States Citizenship and Immigration Services (“USCIS”), Department of Homeland Security (“DHS”) submits this Statement of Uncontroverted Facts and Conclusions of Law. Defendant’s Motion for Summary Judgment, came on regularly for hearing on February 18, 2021, before the Honorable George H. Wu, United States District Judge, in Courtroom 9D of the First Street Courthouse, 350 West 1st Street, Los Angeles, California 90012.

The Court having considered the parties’ filings, evidence presented, memorandum of points and authorities, and oral argument at the hearing, the Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

UNCONTROVERTED FACTS	SUPPORTING EVIDENCE
1. Plaintiffs’ FOIA request was mailed to the National Records Center (“NRC”) in a letter dated August 6, 2018.	Declaration of Jill A. Eggleston (“Eggleston Decl.”) (ECF 57), at ¶ 7, fn. 7; Attach. A (ECF 57-2).
2. Plaintiffs’ FOIA request was not received by the NRC FOIA division and scanned into the NRC FOIA processing system and database until September 12, 2018.	<i>Id.</i>
3. On September 19, 2018, USCIS issued an acknowledgement letter to Plaintiffs, confirming receipt of the FOIA request and informing Plaintiffs that the request was assigned to USCIS’s complex FOIA	<i>Id.</i> , ¶¶ 8-9, and Attach. B (ECF 57-3).

1	processing track (Track II).	
2	4. In the September 19, 2018 letter,	<i>Id.</i>
3	USCIS invoked its right to	
4	additional processing time pursuant	
5	to 5 U.S.C. § 552(a)(6)(B).	
6	5. In the September 19, 2018 letter,	<i>Id.</i>
7	USCIS invited Plaintiffs to narrow	
8	their FOIA request in order to be	
9	eligible for placement in a faster	
10	FOIA processing track.	
11	6. The NRC FOIA staff determined	Eggleston Decl., ¶¶ 10-12.
12	that numerous USCIS program	
13	offices might have responsive	
14	records and requested that the	
15	following offices conduct a search	
16	of their records systems and	
17	databases: Executive Secretariat	
18	(“EXSO”); Field Office Directorate	
19	(“FOD”); Office of Chief Financial	
20	Officer (“OCFO”); Office of Policy	
21	and Strategy (“OP&S”); Office of	
22	Legislative Affairs; Administrative	
23	Appeals Office (“AAO”); and The	
24	Office of Information Technology	
25	(“OIT”).	
26	7. The NRC FOIA staff provided	<i>Id.</i> , ¶ 13, and Attach. C (ECF 57-4).
27	specific written instructions to each	
28		

1	of the agency program offices, in	
2	regard to Plaintiffs' FOIA request.	
3	8. The NRC FOIA staff provided each	<i>Id.</i>
4	of the agency program offices a	
5	search time frame of January 1,	
6	2016, to October 10, 2018, for	
7	Plaintiffs' FOIA request.	
8	9. The NRC FOIA staff identified the	<i>Id.</i>
9	specific item(s) of Plaintiffs' FOIA	
10	request that each program office	
11	should respond to, in regard to	
12	Plaintiffs' FOIA request.	
13	10. The NRC FOIA staff provided	<i>Id.</i>
14	each of the agency program offices	
15	detailed search terms to be utilized	
16	for each item of the Plaintiff's	
17	FOIA request.	
18	11. The NRC FOIA staff identified the	<i>Id.</i>
19	types of documents to search for in	
20	response to Plaintiff's FOIA	
21	request.	
22	12. The NRC FOIA staff identified the	
23	databases to be searched in	
24	response to Plaintiff's FOIA	
25	request, including the Electronic	
26	Immigration System ("ELIS")(a	
27	computerized USCIS immigration	
28		

1	application filing system, including	
2	N-400 naturalization applications,	
3	available for use by the public),	
4	agency email, electronic records	
5	consisting of PowerPoint training	
6	slides, Excel spreadsheets, and	
7	hardcopy documents maintained by	
8	the program offices.	
9	13. The program offices compiled over	<i>Id.</i> , ¶ 14.
10	133 GB of potentially responsive	
11	records that were forwarded to the	
12	NRC for review.	
13	14. The NRC and USCIS program	<i>Id.</i>
14	offices determined that Plaintiffs’	
15	FOIA request was overly broad and	
16	burdensome.	
17	15. The parties met and conferred on	Eggleston Decl., ¶ 15
18	February 21, 2019, to discuss	
19	narrowing the scope of Plaintiffs’	
20	FOIA request.	
21	16. On March 12, 2019, Defendant	<i>Id.</i>
22	outlined the various issues	
23	regarding Plaintiffs’ FOIA request	
24	in an email to Plaintiffs.	
25	17. Plaintiffs’ counsel acknowledged	<i>Id.</i> ; <i>see also</i> , Supplemental Rule 26(f)
26	receipt of the email but did not	Report, (ECF 18), and Ex. B (ECF 18-2)
27	respond further.	
28		

1	18. On June 28, 2019, Defendant made	Eggleston Decl., ¶¶ 16-17, and Attach. D
2	its first production of responsive	(ECF 57-5).
3	records to Plaintiffs, which	
4	consisted of 502 pages of USCIS	
5	PowerPoint slides that were	
6	disclosed in full, with no material	
7	withheld pursuant to any FOIA	
8	exemptions.	
9	19. The PowerPoint slides included	<i>Id.</i>
10	material regarding the transition of	
11	N-400 (naturalization) processing to	
12	the electronic USCIS ELIS platform	
13	and moving away from paper N-	
14	400 adjudications.	
15	20. The records included statistics	<i>Id.</i>
16	about the number of electronically	
17	filed N-400 applications received	
18	by USCIS.	
19	21. Defendant informed Plaintiffs that	<i>Id.</i>
20	it continued to review and process	
21	responsive records.	
22	22. Defendant informed Plaintiffs that	<i>Id.</i>
23	item 15 seeking records from the	
24	DHS Ombudsman Office had been	
25	referred to DHS, as this item sought	
26	records created by an agency other	
27	than USCIS.	
28		

23. Defendant informed Plaintiffs that item 16 seeking records from the DHS Office of Inspector General had been referred to DHS, as this item sought records created by an agency other than USCIS.	<i>Id.</i>
24. The letter again invited Plaintiffs to discuss narrowing the scope of their request.	<i>Id.</i>
25. On July 3, 2019, the parties met and conferred a second time in an attempt to further narrow the scope of the search and the records that Plaintiffs sought.	Eggleston Decl., ¶ 18.
26. USCIS informed Plaintiffs that it was reviewing over 133 GB of potentially responsive records and that it could take many more months to complete that review and process any responsive records.	<i>Id.</i>
27. The parties reached agreement to narrow the records search regarding certain items of Plaintiffs' request.	Eggleston Decl., ¶ 19; July 5, 2019 Supplemental Joint Rule 26(f) Report (ECF 23) (setting forth the parties' search agreement and relative positions regarding each of the twenty items of Plaintiffs' FOIA request).
28. The parties agreed that USCIS will	<i>Id.</i>

1	not be required to search Alien file	
2	("A-file") records or produce	
3	records that pertain to any specific	
4	individual N-400 application.	
5	29. The parties agreed that there are no	<i>Id.</i>
6	responsive records for item 4 of the	
7	request because Congress allocates	
8	no funding to USCIS for	
9	adjudication of N-400s.	
10	30. The parties agreed to limit the	<i>Id.</i>
11	search for any responsive emails to	
12	those sent by senior agency	
13	management officials rather than	
14	rank and file employees.	
15	31. The parties reached agreement	<i>Id.</i>
16	regarding offices and records	
17	custodians that should be searched	
18	specific to items of Plaintiffs'	
19	request.	
20	32. On July 11, 2019, the Court held a	Eggleston Decl., ¶ 20; July 11, 2019
21	status conference and directed that	Status Conference Order (ECF 24).
22	the parties file another status report	
23	on September 10, 2019.	
24	33. On September 10, 2019, the parties	Eggleston Decl., ¶ 21; September 10,
25	filed another Supplemental Rule	2019 Supplemental Rule 26(f) (ECF 25).
26	26(f) Report, updating the Court on	
27	the status of the parties'	
28		

1	negotiations to narrow the scope of	
2	the request and the records search.	
3	34. Based on its review of the records	<i>Id.</i>
4	compiled at that point, Defendant	
5	determined an additional, targeted	
6	search of FOD, OCFO, Office of	
7	Performance and Quality (“OPQ”),	
8	OLA, AAO, Office of	
9	Investigations (“OI”), OIT, and the	
10	ELIS database was necessary.	
11	35. The FOIA staff continued	<i>Id.</i>
12	processing documents but	
13	determined that the documents were	
14	not sufficiently responsive to	
15	Plaintiffs’ request.	
16	36. The Court held a status conference	Eggleston Decl., ¶ 22; September 12,
17	on September 12, 2019, and after	2019 Status Conference Order (ECF 26).
18	considering the parties’ respective	
19	positions, ordered that USCIS to	
20	complete its “amassment of the	
21	applicable records” by November	
22	15, 2019, and make its final records	
23	production to Plaintiffs by	
24	December 13, 2019.	
25	37. On September 16, 2019, the NRC	Eggleston Decl., ¶¶ 23-24, and Attach. E
26	began a second search for records	[NRC Supplemental Staffing Spreadsheet]
27	responsive to Plaintiffs’ FOIA	(ECF 57-6).
28		

1	request.	
2	38. The NRC FOIA staff provided the	<i>Id.</i>
3	USCIS program offices, including	
4	FOD, OCFO, OPQ, OLA, AAO,	
5	OI, and OIT with additional written	
6	and verbal guidance to conduct	
7	another search for records	
8	responsive to specific items in	
9	Plaintiffs' FOIA request.	
10	39. The program offices conducted a	<i>Id.</i> , ¶¶ 23-25.
11	further search of their databases,	
12	email archives, and hardcopy file	
13	records and forwarded potentially	
14	responsive records to the NRC for	
15	review and processing.	
16	40. Databases searched included ELIS,	<i>Id.</i> , ¶ 24.
17	CLAIMS 4, and agency computer	
18	storage drives that may contain	
19	relevant Excel spreadsheets,	
20	Microsoft Word documents such as	
21	letters and memoranda, PowerPoint	
22	presentation slides, and .pdf files	
23	that may contain relevant manuals	
24	and guidance for processing N-400	
25	applications.	
26	41. NRC FOIA staff reviewed the	<i>See</i> Eggleston Decl., ¶ 26.
27	records compilation and determined	
28		

1	that 624 pages of records and 18	
2	Excel spreadsheets were responsive	
3	to the request.	
4	42. Defendant determined there were	<i>Id.</i>
5	no responsive records located for	
6	item 6 of Plaintiffs' FIOA request.	
7	43. Defendant determined there were	
8	no responsive records located for	
9	item 7 of Plaintiffs' FOIA request.	
10	44. Defendant determined there were	
11	no responsive records located for	
12	item 13 of Plaintiffs' FOIA request.	
13	45. Defendant determined there were	
14	no responsive records located for	
15	item 17 of Plaintiffs' FOIA request.	
16	46. Defendant determined there were	
17	no responsive records located for	
18	item 19 of Plaintiffs' FOIA request.	
19	47. On December 13, 2019, the NRC	Eggleston Decl., ¶ 26, and Attach. F (ECF
20	sent a second FOIA response to	57-7).
21	Plaintiffs.	
22	48. Defendant's second FOIA response	<i>Id.</i>
23	informed Plaintiffs that in regard to	
24	items 6 and 7 of Plaintiffs' FOIA	
25	request, no records exist.	
26	49. Defendant's second FOIA response	<i>Id.</i>
27	informed Plaintiffs that in regard to	
28		

1	item 13, AAO does not have any	
2	appellate jurisdiction over N-400	
3	applications. As a result, AAO is	
4	unable to produce or provide a	
5	report on USCIS administrative	
6	appeals pertaining to N-400	
7	applications.	
8	50. Defendant's second FOIA response	<i>Id.</i>
9	informed Plaintiffs that item15 was	
10	referred to the DHS Ombudsman's	
11	Office for a response direct to	
12	Plaintiffs, as that items of the	
13	request sought records created by	
14	another component of DHS, not	
15	USCIS.	
16	51. Defendant's second FOIA response	<i>Id.</i>
17	informed Plaintiffs that item 16 was	
18	referred to the DHS Office of	
19	Inspector General, for a response	
20	direct to Plaintiffs, as that items of	
21	the request sought records created	
22	by another component of DHS, not	
23	USCIS.	
24	52. Defendant's second FOIA response	<i>Id.</i>
25	informed Plaintiffs that in regard to	
26	item 17, the NRC did not locate any	
27	responsive records.	
28		

1	53. Defendant's second FOIA response	<i>Id.</i>
2	informed Plaintiffs that in regard to	
3	item 19, USCIS has not changed its	
4	mission, which is to administer the	
5	nation's lawful immigration	
6	benefits system.	
7	54. Defendant provided Plaintiffs two	<i>Id.</i> , ¶ 27.
8	compact discs of responsive records	
9	along with the second response	
10	letter.	
11	55. One disc contained 18 Excel	<i>Id.</i>
12	format spreadsheets.	
13	56. The disc containing the 18 Excel	<i>Id.</i>
14	spreadsheets denoted which of the	
15	20 specific item(s) of Plaintiffs'	
16	FOIA request each spreadsheet is	
17	responsive to.	
18	57. Only three of the 18 Excel	<i>Id.</i> , ¶ 29
19	spreadsheets contain limited	
20	redacted material, the rest were	
21	released in their entirety to	
22	Plaintiffs.	
23	58. The other disc contained 624 pages	<i>Id.</i> , ¶ 27
24	of material referenced above, saved	
25	in .pdf file format.	
26	59. The disc containing the 624 pages	<i>Id.</i> , ¶ 28.
27	of records included seven .pdf files.	
28		

1	60. Each .pdf filename ends with a	<i>Id.</i>
2	unique number, e.g. 8, 10, 12, 14,	
3	etc., which indicates which of the	
4	20 FOIA request item(s) that the	
5	file is responsive to.	
6	61. With the second FOIA response	<i>Id.</i> , ¶ 29
7	letter, Defendant released 450 pages	
8	in their entirety and 174 in part.	
9	62. With the second FOIA response	<i>Id.</i>
10	letter, the NRC determined to	
11	release all information from the	
12	responsive records except the	
13	portions that are appropriately	
14	exempt pursuant to 5 U.S.C. § 552	
15	(b)(5), (b)(6) and (b)(7)(C) of	
16	FOIA.	
17	63. In regard to the records released in	<i>Id.</i>
18	Defendant's second FOIA response,	
19	any partially redacted material	
20	contains a box "outline" showing	
21	the location of the redacted material	
22	and a reference to the specific FOIA	
23	exemption citation that supports	
24	withholding the material.	
25	64. In regard to the records released in	<i>Id.</i>
26	Defendant's second FOIA response,	
27	no record is redacted in full.	
28		

1	65. NRC FOIA staff carefully	Eggleston Decl., ¶ 29.
2	conducted a line-by-line review of	
3	the responsive records, segregated	
4	all non-exempt material and	
5	released all reasonably segregable,	
6	non-exempt information to	
7	Plaintiffs.	
8	66. Any further segregation and release	<i>Id.</i>
9	of the redacted material in this case	
10	would entail releasing information	
11	that is appropriately exempt from	
12	FOIA production.	
13	67. Defendant's records searches in this	Eggleston Decl., ¶ 30.
14	case were reasonably calculated to	
15	locate records responsive to	
16	Plaintiffs' FOIA request.	
17	68. All files and agency offices likely	<i>Id.</i>
18	to contain responsive material were	
19	searched in this case.	
20	69. USCIS has no reason to believe	<i>Id.</i>
21	that additional responsive records	
22	exist that are within USCIS custody	
23	and control.	
24	70. The <i>Vaughn</i> index describes the	Eggleston Decl., ¶ 31, and Attach. G
25	records, how they were segregated,	[<i>Vaughn</i> index] (ECF 57-8).
26	and the justification for the FOIA	
27	exemptions applied to the records.	
28		

1	71. The limited withholdings in this	<i>Id.</i> ; <i>see also</i> , 5 U.S.C. § 552(b)(5)
2	case for “inter-agency or intra-	(“Exemption 5”)
3	agency memorandums or letters	
4	which would not be available by	
5	law to a party other than an agency	
6	in litigation with the agency” are	
7	justified based on the FOIA	
8	exemption 5 that Defendant applied	
9	to the records.	
10	72. The limited withholdings in this	<i>Id.</i> ; <i>see also</i> , 5 U.S.C. § 552(b)(6)
11	case for “personnel and medical	(“Exemption 6”)
12	files and similar files the disclosure	
13	of which would constitute a clearly	
14	unwarranted invasion of personal	
15	privacy” are justified based on the	
16	FOIA exemption 6 that Defendant	
17	applied to the records.	
18	73. The limited withholdings in this	<i>Id.</i> ; <i>see also</i> , 5 U.S.C. § 552(b)(7)(C)
19	case for “personnel and medical	(“Exemption 7(C)”)
20	files and similar files the disclosure	
21	of which would constitute a clearly	
22	unwarranted invasion of personal	
23	privacy” are justified based on the	
24	FOIA exemption 7(c) that	
25	Defendant applied to the records.	

1 Any Conclusion of Law deemed to be a Finding of Fact is hereby incorporated
2 into these Findings of Fact.

3 Based on the foregoing Undisputed Facts, the Court now makes its:

4 **CONCLUSIONS OF LAW**

5 **III. STANDARD OF REVIEW IN FOIA CASES**

6 The United States can only be sued to the extent that it has waived its sovereign
7 immunity. *Baker v. United States*, 817 F.2d 560, 562 (9th Cir. 1987). The waiver of
8 sovereign immunity under the FOIA gives the Court jurisdiction to enjoin an agency
9 from withholding agency records improperly withheld and to order the production of any
10 agency records improperly withheld from a plaintiff. 5 U.S.C. § 552(a)(4)(B); *Spurlock*
11 *v. FBI*, 69 F.3d 1010, 1015 (9th Cir. 1995). Federal jurisdiction to order disclosure is
12 dependent on a showing that an agency has (1) “improperly” (2) “withheld” (3) “agency
13 records.” *Spurlock*, 69 F.3d at 1015 (*quoting Kissinger v. Reporters Comm. for Freedom*
14 *of Press*, 445 U.S. 136, 150, 100 S. Ct. 960, 968, 63 L. Ed. 2d 267 (1980)). “Unless each
15 of these criteria is met, a district court lacks jurisdiction to devise remedies to force an
16 agency to comply with the FOIA’s disclosure requirements.” *Id.* (*quoting Dep’t of*
17 *Justice v. Tax Analysts*, 492 U.S. 136, 142, 109 S. Ct. 2841, 2846-47, 106 L. Ed. 2d 112
18 (1989)). Thus, the Court only has jurisdiction over agency records or documents that are
19 improperly withheld.

20 Under FOIA, an agency’s decision to withhold information from a FOIA requester
21 is subject to *de novo* review. 5 U.S.C. § 552(a)(4)(B). The agency bears the burden of
22 justifying the nondisclosure of documents and establishing that particular documents are
23 exempt from disclosure. *Lane v. Dept. of Interior*, 523 F.3d 1128, 1135-36 (9th Cir.
24 2008); *Citizens Comm’n on Human Rights v. FDA*, 45 F.3d 1325, 1328 (9th Cir. 1995).
25 To meet its burden, the agency may rely on affidavits or declarations and other evidence
26 which show that the documents are exempt from disclosure. *Lane*, 523 F.3d at 1135-36.
27 Summary judgment may be granted solely on the basis of agency affidavits or
28 declarations if they contain reasonably detailed descriptions of the documents and allege

1 facts sufficient to establish an exemption. *See Lane*, 523 F.3d at 1136 (citing *Lewis v.*
 2 *IRS*, 823 F.2d 375, 378 (9th Cir. 1987) (“district court need look no further”).

3 FOIA cases are typically decided on motions for summary judgment because facts
 4 are rarely in dispute. *See Yonemoto v. Department of Veterans Affairs*, 686 F.3d 681, 688
 5 (9th Cir. 2012); *Lane*, 523 F.3d at 1134. A defendant is entitled to summary judgment in
 6 a FOIA case when it demonstrates that no material facts are in dispute, that it has
 7 conducted an adequate search for responsive records, and that each responsive record
 8 that it has located has either been produced or is exempt from disclosure. *Weisberg v.*
 9 *U.S. Dep’t of Justice*, 627 F.2d 365, 368 (D.C. Cir. 1980); *see also Zemansky v. U.S.*
 10 *EPA*, 767 F.2d 569, 571 (9th Cir. 1985); *Kissinger v. Reporters Comm. for Freedom of*
 11 *Press*, 445 U.S. 136, 150 (1980).

12 **IV. ARGUMENT**

13 **A. Defendant Conducted Reasonable Search for Records**

14 Under the FOIA, an agency is obligated to conduct a search that is “‘reasonably
 15 calculated to uncover all relevant documents.’” *ACLU of Southern Cal. v. DHS*, 2012
 16 WL 5342411, at *1 (C.D. Cal. Oct. 25, 2012) (quoting *Lane*, 523 F.3d at 1139); *see also,*
 17 *Weisberg v. Dep’t of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). A reasonable search
 18 is one that covers those locations where responsive records are likely to be located.
 19 *Oglesby v. Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990). To satisfy its obligation,
 20 “the agency must show that it made a good faith effort to conduct a search for the
 21 requested records, using methods which can be reasonably expected to produce the
 22 information requested.” *Id.*; *see also, ACLU of Southern Cal.*, 2012 WL 5342411, at *1.

23 A search is not inadequate merely because it failed to “uncover[] every document
 24 extant.” *Safecard Servs., Inc. v. SEC*, 926 F.2d 1197, 1201 (D.C. Cir. 1991); *see Lane*,
 25 523 F.3d at 1139 (noting that in FOIA cases, “the government need not show that it
 26 produced every responsive document”). A search is inadequate only if the agency fails to
 27 “show, with reasonable detail, that the search method . . . was reasonably calculated to
 28 uncover all relevant documents.” *Oglesby*, 920 F.2d at 68; *see Lane*, 523 F.3d at 1139

1 (holding that the government’s search “need only be reasonable”). Accordingly, for a
2 court evaluating an agency’s search, the fundamental question is “whether the search for
3 those documents was adequate,” not “whether there might exist any other documents
4 responsive to the request.” *Steinberg v. Dep’t of Justice*, 23 F.3d 548, 551 (D.C. Cir.
5 1994); *see Weisberg*, 705 F.2d at 1351 (determining that “the issue is not whether any
6 further documents might conceivably exist but rather whether the government’s search
7 for responsive documents was adequate”) (citation omitted).

8 The agency bears the burden of demonstrating the adequacy of the search by
9 providing a declaration that contains “reasonably detailed descriptions of the documents
10 and allege facts sufficient to establish an exemption.” *Lane*, 523 F.3d at 1139; *Clay v.*
11 *Dep’t of Justice*, 680 F. Supp. 2d 239, 245 (D.D.C. 2010) (*quoting Ogelsby*, 920 F.2d at
12 68) (finding such affidavits should set forth the search terms and type of search
13 performed, and aver that all files likely to contain responsive materials were searched);
14 *In Def. of Animals v. NIH*, 543 F. Supp. 2d 83, 98 (D.D.C. 2008) (“To meet its burden,
15 the agency may submit affidavits or declarations that explain both in reasonable detail
16 and in a non-conclusory fashion the scope and method of the agency’s search.”).
17 “Agency affidavits are accorded a presumption of good faith which cannot be rebutted
18 by purely speculative claims about the existence and discoverability of other
19 documents.” *SafeCard Servs.*, 926 F.2d at 1200 (quotations omitted). Once an agency
20 has met its burden to demonstrate the adequacy of its search, the agency’s position can
21 be rebutted “only by showing that the agency’s search was not made in good faith.”
22 *Maynard v. CIA*, 986 F.2d 547, 560 (1st Cir. 1993). Speculative or hypothetical
23 assertions are insufficient to raise a material question of fact with respect to the adequacy
24 of an agency’s search. *Ogelsby*, 920 F.2d at 67 n. 13.

25 Here, Plaintiffs’ FOIA request was complex, seeking access to 20 different
26 categories of records that pertained to USCIS processing of N-400 (naturalization)
27 applications over a nearly three year period. As set forth above, Defendant conducted
28 two separate searches, repeatedly consulted with Plaintiffs’ counsel and used the search

1 terms provided by Plaintiffs. Initially, the FOIA staff initially identified seven offices to
 2 be searched, provided specific written instructions to each program offices, identified the
 3 specific item(s) of Plaintiffs' FOIA request that the program office should respond to,
 4 and provided detailed search terms to be utilized for each item of the request. *See*
 5 Eggleston Decl., ¶¶ 10-14. In addition, the FOIA staff identified the types of documents
 6 to search for and the specific databases to be searched. *Id.*, ¶ 13. Defendant also provided
 7 additional written and verbal guidance to the program officers, in order to assist them in
 8 conducting a second search for records, including searches of their databases, email
 9 archives, and hardcopy file records. *Id.*, ¶¶ 23-25. Databases searched included ELIS,
 10 CLAIMS 4, and agency computer storage drives that may contain relevant Excel
 11 spreadsheets, Microsoft Word documents such as letters and memoranda, PowerPoint
 12 presentation slides, and .pdf files that may contain relevant manuals and guidance for
 13 processing N-400 applications. *Id.*, ¶ 24.

14 Thus, as demonstrated by the Eggleston Declaration, Defendant has met its burden
 15 to perform an adequate search for responsive records in this case.

16 **B. Defendant Properly Withheld Documents Under Exemption 5**

17 As set forth above, Defendant made two separate releases of records to Plaintiffs,
 18 producing a total of 1,126 pages of responsive records and 18 voluminous Excel
 19 spreadsheets in response to their FOIA request. The vast majority of records disclosed to
 20 Plaintiffs in this case were released in their entirety. Only 174 pages were produced in
 21 part, and minor portions of only three of the Excel spreadsheets were exempt from
 22 disclosure in this FOIA case. Fifteen of the responsive Excel spreadsheets were disclosed
 23 to Plaintiffs in full.

24 Defendant carefully reviewed the responsive records compiled in this case and
 25 released all information except the portions that are appropriately exempt pursuant to 5
 26 U.S.C. § 552(b)(5) ("Exemption 5"); (b)(6) ("Exemption 6"); and (b)(7)(C) ("Exemption
 27 7(C)") of the FOIA. *See* Eggleston Decl., ¶¶ 17, 26, and Attachs. D, F. After a careful,
 28 line-by-line review, Defendant appropriately segregated all non-exempt material and

disclosed it to Plaintiffs. The few records that are partially redacted are, for the reasons stated below, exempt from FOIA disclosure. It remains unclear whether Plaintiffs intend to challenge the withholdings in this case.

1. Exemption 5 – Inter-Agency or Intra-Agency Memorandums

Exemption 5 to the FOIA exempts from disclosure “inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.” 5 U.S.C. § 552(b)(5). The exemption applies to documents that are normally privileged in the civil litigation context. Consequently, Exemption 5 permits the withholding of all or portions of any documents that are subject to the deliberative process privilege or the work-product doctrine, among others.

In this case, certain documents were withheld under the deliberative process privilege. The deliberative process privilege protects the internal deliberations of an agency by exempting from release recommendations, analyses, opinions, advisory guidance, and other non-factual information prepared as part of an agency decision-making process. The purpose of the deliberative process privilege is to prevent injury to the quality of agency decisions. *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 151 (1975). Thus, pre-decisional material comprising and reflecting internal deliberation may properly be withheld as release would have a chilling effect on producing quality decisions because agency personnel would be less candid in developing and sharing such opinions, recommendations or viewpoints.

Here, for example, Defendant properly withheld the material from an Executive Summary that summarized the proposed fee schedule rule change and the agency’s reasons for proposing immigration fee adjustments in 2016, pursuant to Exemption 5. *See Vaughn* index (ECF 57-8), at 8. In that case, the USCIS Fee Schedule Proposed Rule that resulted from the 2016 fee study was published in the Federal Register on May 4, 2019. Thus, the withheld material reflected pre-decisional internal agency deliberations regarding a rule change. *Id.*, at 9. The release of such information would tend to have a chilling effect on the ability and willingness of agency officials to freely deliberate and

1 concur or non-concur with proposed agency policy changes. *Id.* Similarly, Defendant
 2 withheld portions of emails, briefing and background materials prepared for the USCIS
 3 Director regarding a Congressional hearing, and PowerPoint slides based on Exemption
 4 5’s deliberative process privilege. *Id.*, at 13-14. The release of such information would
 5 reveal sensitive internal agency information about proposed plans to address the USCIS
 6 backlog, reasons for the backlog, and possible solutions, including proposals for
 7 budgetary outlays to specific programs to address the backlog. *Id.* Moreover, such
 8 information is pre-decisional, was prepared in anticipation of critical Congressional
 9 testimony and illustrates the internal “give-and-take” deliberations between senior
 10 management at USCIS. *Id.* Release of this information would have a chilling effect on
 11 management’s ability to freely discuss, deliberate and make important decisions. *Id.*

12 **2. Exemption 6 & 7(c) – Unwarranted Invasion of Personal Privacy**

13 Exemption (b)(6) applies to “personnel and medical files and similar files the
 14 disclosure of which would constitute a clearly unwarranted invasion of personal
 15 privacy.” 5 U.S.C. § 552(b)(6). The phrase “similar files” “has a broad, rather than a
 16 narrow meaning” and includes records containing information about individuals. *Forest*
 17 *Service Empls. for Envtl. Ethics v. U.S. Forest Serv.*, 524 F.3d 1021, 1024 (9th Cir.
 18 2008) (quotation omitted). Exemption 7(c) provides somewhat broader protection,
 19 exempting from release information in law enforcement records that, if disclosed, “could
 20 reasonably be expected to constitute an unwarranted invasion of personal privacy.”
 21 5 U.S.C. § 552(b)(7)(C). The agency must first establish that the document has a law
 22 enforcement purpose, a standard that is easily met here, as described above. *See infra*;
 23 *Rosenfeld v. Dep’t of Justice*, 57 F.3d 803, 808 (9th Cir. 1995).

24 Once the threshold requirement is satisfied, similar to Exemption 6, the court must
 25 “balance the privacy interest protected by the exemption[] against the public interest in
 26 government openness that would be served by disclosure.” *Lahr v. National Transp.*
 27 *Safety Bd.*, 569 F.3d 964, 973 (9th Cir. 2009). While both Exemption 6 and Exemption
 28 7(c) require this balancing, Exemption 7(c)’s privacy protection is stronger, and the

1 exemptions differ in the “magnitude of the public interest” that must be shown to
2 overcome the protected privacy interests. *Id.* “Personal privacy interests” under
3 Exemption 7(c) encompass a “broad range of concerns” relating to an individual’s
4 control of personal information and “interest in keeping personal facts away from the
5 public eye. *Id.* Also, similar to Exemption 6, “[o]nce the government has identified a
6 cognizable privacy interest, the only relevant public interest . . . is the extent to which
7 disclosure of the information sought would shed light on an agency’s performance of its
8 statutory duties or otherwise let citizens know what their government is up to.” *Id.*
9 (quotation omitted).

10 Here, the information withheld under Exemption 6 and/or 7(c) includes references
11 to “Inquiry Numbers” pertaining to specific individual N-400 applicants who were the
12 subject of the Congressional inquiry, and is linked to individual A-files. *See Vaughn*
13 index (ECF 57-8), at 4-5. These individuals have a strong privacy interest in not having
14 such references released in the public domain. The inquiry numbers withheld is linked to
15 and traceable directly to an N-400 applicant. *Id.* This is personal identifying information
16 that is appropriately exempt pursuant to Exemption 6. *Id.* The disclosure of such
17 information could reasonably be expected to constitute an unwarranted invasion of
18 personal privacy and/or subject these individuals to harassment, and Plaintiffs have
19 identified no public interest outweighing these interests. *Id.* Moreover, Plaintiffs in this
20 case agreed that Defendant would not be required to produce any records that pertain to
21 any specific individual N-400 application. *Id.*; *see also*, July 5, 2019 Joint Supplemental
22 Rule 26(f) Report (ECF 23). Similar redactions are made to the PowerPoint training
23 slides that contain examples of ELIS data that contains sample N-400 records that are
24 found in the ELIS database. *See Vaughn* index (ECF 57-8), at 7. The slides include
25 names, dates of birth, country of birth, addresses, receipt numbers, and alien numbers of
26 N-400 applicants. *Id.*

27 \\\

28 \\\

1 **V. CONCLUSION**

2 For the reasons stated above, Defendant respectfully requests that summary
3 judgment be entered in its favor. Defendant has conducted an adequate search for the
4 requested records, has properly asserted appropriate exemptions, provided a sufficiently
5 detailed *Vaughn* index justifying the agency's withholdings and properly concluded that
6 no information was segregable. Accordingly, there is no material factual dispute, and
7 Defendant is entitled to summary judgment in this matter.

8 Dated: _____, 2021

9 _____
10 GEORGE H. WU
11 UNITED STATES DISTRICT JUDGE

12 Presented by:

13 NICOLA T. HANNA
14 United States Attorney
15 DAVID M. HARRIS
16 Assistant United States Attorney
17 Chief, Civil Division
18 JOANNE S. OSINOFF
19 Assistant United States Attorney
20 Chief, General Civil Section, Civil Division

21 /s/ *Alarice M. Medrano*

22 _____
23 ALARICE M. MEDRANO
24 Assistant United States Attorney

25 Attorneys for Defendants, United States
26 Citizenship and Immigration Services,
27 Department of Homeland Security
28